

Original

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

RECEIVED

2018 MAR 12 A 1108 Civil No: 2:18-cv-167-WKW-TFM

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|---|--|
| United States District Court | District MIDDLE DIST. OF ALABAMA |
| Name (under which you were convicted) U.S. DISTRICT COURT ZEDEKIAH SYKES MIDDLE DISTRICT ALA | |
| Place of Confinement: FCI-MEMPHIS | Prisoner No.: 61955-065 |
| UNITED STATES OF AMERICA | Movant (include name under which you were convicted) ZEDEKIAH SYKES |

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: In the Eleventh Circuit/Middle District of Alabama Montgomery, Alabama.

2. (b) Criminal docket or case number (if you know): CR-093-01-WKW
2. (a) Date of the judgment of conviction (if you know): March 20th, 2017

3. (b) Date of sentencing: March 16th, 2017
3. Length of sentence: (36)-Months
4. Nature of crime (all counts): Revocation of Probation or Supervised-Release: Nature of Violations- (1) Failure to report to the probation officer, (2)-Failure to notify the probatn. off. of a change or residence, (3) Failure to refrain from gambling or entering in a venue where gambling occurs, (4) Failure to pay restitution, - (5) Failure to disclose all assets and liabilities to the probatn. officer, (6) New law violation-forgery 2nd degree and attempting to elude a police officer.

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? Guilty on all counts.

6. If you went to trial, what kind of trial did you have? (Check one) N/A Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? N/A Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? N/A Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No N/A

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: N/A

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No N/A

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No N/A

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No N/A

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Due to Ineffective Assistance of Counsel, my lawyer advised me not to and, that "things could have been much worse."

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My Sentencing Guidelines (maximum) range was (18-24) months and [not (36)-months. Please see: Attachments (A) & (B).

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

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ATTACHMENT ON BEHALF OF MOTION UNDER 28 U.S.C. § 2255 TO VACATE,
SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

While on Supervised Release, then court shall revoke sentence of supervised release and sentence defendant to [n]ot less than one-third of original sentence is governed by duration of sentence of incarceration which defendant could have received initially under Federal Sentencing Guidelines (18 USCS Appx), and must be at least one-third of, and [n]ot more than, maximum sentence under applicable range of imprisonment for defendant's original offense under Guidelines, and thus **may not exceed** (24)-months for the letter carrier who is found to have not reported to the probation officer, failure to notify probation officer, failure to notify probation officer of change of residence, failure to refrain from gambling or entering in a venue where gambling occurs, failure to pay restitution, failure to disclose assets and liabilities to probation officer, and new law violation (without conviction) of forgery 2nd degree and attempting to elude police officer while on 60 months' supervised release for bank fraud in violation of federal law which offense carries, under letter carrier's circumstances.

Accordingly, the Sentencing Guidelines (maximum) imprisonment range from (18 to 24) months under Guidelines because, where text, structure, and history fail to establish unambiguously that revocation sentence should be based on earlier sentence of supervised release, Supreme Court will apply rule of lenity and release ambiguity in favor of letter carrier, who, having served - (14) months in prison, is thus entitled to be released from serving any additional imprisonment. Therefore, abuse of discretion, was in fact, an unequivocal factor in the deciding standard of -

ATTACHMENT Conclusion: ON BEHALF OF MOTION UNDER U.S.C. § 2255
TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL
CUSTODY.

the supervised release revocation sentencing hearing; despite the Assistant United States Attorney's request for (18 to 24) months of imprisonment. Furthermore, my current sentence [is] in fact, (invalid) and (contrary) to the law.

Respectfully submitted, This 8th Day of March 2018.


Zedekiah Sykes
Pro se-(Movant)

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: My attorney once again had advised me that I - had absolutely no recourse, not a chance.

GROUND TWO: Did [n]ot even have (36)-months remaining on my (60)-months Supervised Release.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Was in fact, sentenced to (60)-months of Supervised Release 2009 on (1)-Count of Bank Fraud; And had (served) a little - over (3)-years of supervised release prior to being revoked.

(b) Direct Appeal of Ground Two: N/A

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings: N/A

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No N/A

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND THREE: ABUSE OF DISCRETION.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
The AUSA, even (himself) did [n]ot seek nor requested imprisonment of more than (18-24) months, he, was in fact, quite astounded by the Judges' ruling on March 16th, 2017.

(b) Direct Appeal of Ground Three: N/A

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings: N/A

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application? N/A

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No N/A

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: SO-CALLED EXTREME CRIMINAL HISTORY.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The so-called extreme criminal history, was in fact, (already) factored-in the (original) scoring from sentencing, and thus, should [not] have been the perimeter for re-applying that - which was ruled on March 16th, 2017.

(b) Direct Appeal of Ground Four: N/A

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings: N/A

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No N/A

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Please see: Attachment Page (A-B)

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Donnie Bethel 817 So. Court St., Montgomery, Alabama 36104.

(b) At arraignment and plea: Donnie Bethel

(c) At trial: N/A

(d) At sentencing: Of Supervised Release Revocation, Donnie-Bethel.

(e) On appeal: N/A

(f) In any post-conviction proceeding: Pro se

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro se

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* N/A

N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of:

(1) the date on which the judgment of conviction became final;
(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

I humbly request's, especially, on behalf of my wife and children, I wish to be re-sentenced [un]der the legal prescribed Guidelines.

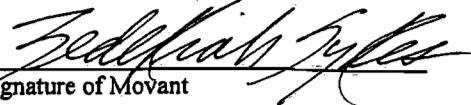
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

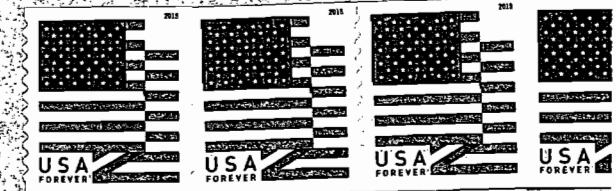
3/8/2018 (month, date, year).

Executed (signed) on 3/8/2018 (date).


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

ZEDEKIAH SYKES
Reg. No: 61955-065
Federal Correctional Institution
P.O. Box 34550
Memphis, Tennessee 38184-0550



[L E G A L M A I L]
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